

Louisiana Patient's Compensation Fund, P.O. Box 3718, Baton Rouge, LA 70821
www.lapcf.louisiana.gov (225) 342-8787 Toll Free: 1-866-469-9555



Lorraine LeBlanc,
Executive Director

From the Director

The Medical Malpractice CAP

By Lorraine LeBlanc, PCF Executive Director

The Patient's Compensation Fund is very concerned about the recent Third Circuit ruling declaring the cap unconstitutional. The PCF is working closely with others including medical groups and associations, insurers, the Louisiana State Medical Society, the Louisiana Attorney General's office, and various attorneys representing many other interested parties. A joint effort is being made to protect the Medical Malpractice Act and ensure that affordable malpractice coverage will be available to the health care providers in the State. The citizens of the State will not benefit for higher malpractice premiums. Higher rates would discourage new providers from coming to Louisiana and may well result in many

INSIDE THIS ISSUE

From the Director	1
Payments Over and Above the CAP	1
Rates	3
Financial Stability	3
Hurricane Litigation and the PCF	4
Reminders from the Surcharge Department	4
What's on Your Mind?	7

leaving the State. This would result in fewer providers available to care for the medical needs of the citizens in Louisiana. The State does not need a further shortage of physicians or other health care providers. The Medical Malpractice Act provides for stability in the health care industry and prevents this State from being in a crisis situation. It clearly needs to be maintained.

The PCF will also be working with the various health care provider organizations and insurers relative to any proposed changes to the Medical Malpractice Statutes before and during the 2007 Regular legislative session.

Payments Over and Above the CAP

By Ken Schnauder, PCF Claims Manager

In 1975 when the Medical Malpractice Act was enacted the statutory CAP on damages was \$500,000 inclusive of all special damages. In 1984 the legislature added "future medical and related care" provisions to the Act thus in effect increasing the CAP on damages to in many cases, an unlimited amount. It is not commonly known that in cases of catastrophic injury and the provision for future medical care is included in a judgment whereby the PCF pays all related medical care until the untimely death of the patient.

In addition to the ongoing future medical care of patients the medicals incurred from the date of malpractice forward are also paid by the PCF over and above the CAP. In the case of catastrophic injury the total amount of medicals incurred from the date of incident until settlement can be millions of dollars.

The third element of costs associated with a claim that is paid over and above the CAP is judicial

Year	Payments Within CAP	Payments Over and Above CAP	Grand Total	% of Payments Above CAP
2006	\$ 65,803,237.23	\$ 39,862,002.13	\$ 105,665,239.36	38%
2005	\$ 44,645,229.17	\$ 27,445,350.65	\$ 72,090,579.82	38%
2004	\$ 39,010,216.04	\$ 27,326,173.44	\$ 66,336,389.48	41%
2003	\$ 49,348,421.91	\$ 27,383,378.00	\$ 76,731,799.91	36%
2002	\$ 45,372,288.31	\$ 25,890,832.80	\$ 71,263,121.11	36%
2001	\$ 39,875,277.37	\$ 24,754,703.36	\$ 64,629,980.73	38%
2000	\$ 29,609,367.36	\$ 34,134,568.72	\$ 63,743,936.08	54%
1999	\$ 45,828,616.43	\$ 35,302,118.25	\$ 81,130,734.68	44%
1998	\$ 41,419,943.53	\$ 25,102,739.23	\$ 66,522,682.76	38%
1997	\$ 32,825,645.55	\$ 22,979,754.71	\$ 55,805,400.26	41%
Total	\$ 433,738,242.90	\$ 290,181,621.29	\$ 723,919,864.19	40%

Table 1. Claim Payments Made Over the Last 10 Years by the PCF Over and Above the CAP

interest, which is calculated on the total damage award from the filing date of a panel until the claim is paid. The average age of a claim from filing until payment is 5 years. Using current judicial interest calculations, this result is an average interest exposure on each claim of 29.5%. As an example, the exposure to the PCF on a claim valued at the CAP (\$100,000 credit to the primary health care provider and \$400,000 to the PCF) with total medicals of \$100,000 would be \$645,000. All of a sudden the

went from \$500,000 to \$745,000 with the PCF paying \$645,000.

\$100,000 Primary Credit
\$400,000 PCF Payment
\$100,000 Incurred Medical Bills
\$145,000 Judicial Interest

\$745,000 Total Payment

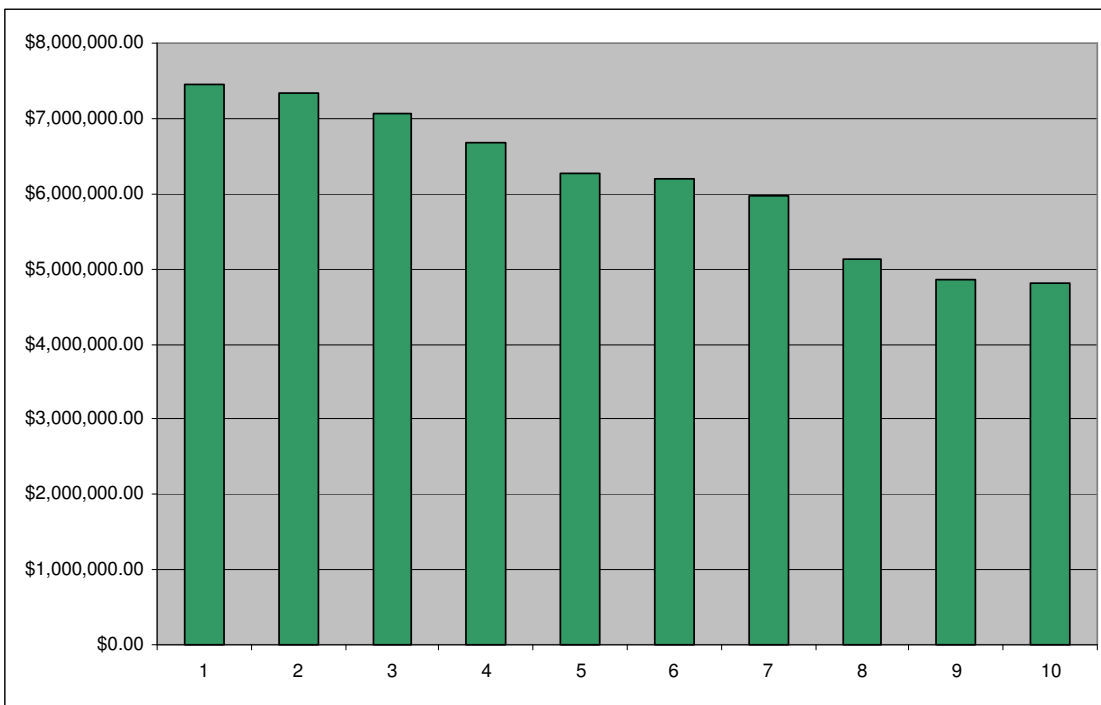


Chart 1. 10 Most Costly Claims and the Amounts Paid

Above are illustrations of claims payments made over the last 10 years by the PCF over and above the CAP. I believe even the most critical of the alleged inadequacy of the CAP will be surprised by the magnitude of payments in excess of the CAP. The most costly claims are those associated with ongoing future medical care. The graph to the left lists the 10 most costly and the amounts paid which range from a high of

statutory CAP which some feel is grossly inadequate

\$7.5 million to a low of \$4.8 million. Of these 10 claims illustrated, 7 are still open and incurring

medical expenses on a daily basis. Currently the PCF has 158 ongoing future medical claims for which payments in excess of \$1million per month are made and will continue to be made at an increasing rate for the foreseeable future.

The second illustration is a chart of total claim payments by calendar year detailing those payments

made within the CAP and those payments made over and above the CAP. It is interesting to note over the past 10 years 40% of all claim payments have been in excess of the \$500,000 CAP.

Those who criticize our Medical Malpractice Act and the inadequacy of the alleged CAP should take notice of the millions of dollars in claims payments being made that do not fall within the CAP.

Rates

By Lorraine LeBlanc, PCF Executive Director

As a result of our yearly actuarial study, rate increases have been recommended and approved by the Patient's Compensation Fund Oversight Board. They become effective January 1, 2007. The average rate change being requested for physicians is an increase of 11%. The requested increase for hospitals and nursing homes is 10.4%. Some providers will not have any increase in rates. The overall increase for all providers combined is 10.2%.

The rate increase was not undertaken lightly. The

Patient's Compensation Fund Oversight Board members, as fellow physicians and health care administrators, are also affected by an increase in rates. The Board realizes this is a difficult time for a large number of the health care providers in this state; however, in order to maintain the integrity of the Fund, they feel a rate increase is necessary. The Board must ensure the solvency of the Fund and creditability of this agency and keep this State's Patient Compensation Fund as a leader in the medical malpractice insurance arena.

Financial Stability

By Gaye Smith, PCF Administrative Director

The **goal** of the Patient's Compensation Fund Oversight Board is to ensure the longevity of the Fund by maintaining its financial stability. By establishing and maintaining surcharge rates that are held to moderate levels, the Patient's Compensation Fund strives to effectively maintain sufficient solvency to promptly resolve and fairly compensate legitimate victims of medical malpractice and to zealously resist and defend unmeritorious and/or exaggerated claims.

As part of the revamping of the Medical Malpractice Act in 1990, the Legislature saw the need for financial stability to ensure funds were available for payment of future claims. Prior to the PCF Oversight Board's creation, claims were paid on a dollar-in/dollar-out

basis. Therefore a requirement was imposed on the PCF to have a surplus equal to 50% of the annual sum of surcharges collected, claims paid, reserves including Incurred But Not Reported (IBNR) reserves, and expenses.

Between 1990 and 2003, PCF failed to meet that requirement. In 1999, the Department of Insurance required that PCF initiate a plan to obtain the required surplus. In consultation with the Board's actuary, the Board instituted a plan to close the gap between the funds available and the required surplus. In addition, in 2003, the Medical Malpractice statute was changed to lower the **surplus** from 50% to 30%. These two actions

brought PCF into compliance with the law, setting PCF on the path of ensuring the Fund's financial stability.

The Board continues to monitor and review the Fund's financial stability. Claims payments are on the increase, as witnessed during FY2005–2006, when

“The goal of the Patient's Compensation Fund Oversight Board is to ensure the longevity of the Fund by maintaining its financial stability”.

PCF's entire \$97,000,000 budget was spent on settlements, judgments and other Claims-related expenses. The Board is ever mindful of their need to have sufficient funds on hand to fairly compensate legitimate claims, while keeping surcharge rates affordable for health care providers. Maintaining this balance is like walking a tight-rope in a whirlwind, especially in light of the Medical Malpractice Cap's uncertain future.

Rest assured that your Board is pursuing all alternatives to maintain the Patient's Compensation Fund's continued financial stability, while remaining in compliance with the law.

Hurricane Litigation and the PCF

By Lorraine LeBlanc, PCF Executive Director

Hurricane Katrina had a devastating impact on the entire State, but certainly more so in St. Bernard Parish and the New Orleans area. The Patient's Compensation Fund has received many claims as a result of Hurricane Katrina. There is litigation pending involving the issue of whether or not the failure to evacuate, maintain power and prevent flooding falls under the Medical Malpractice Act. The PCF is involved in the litigation. No matter which way the courts ultimately rule, the impact will be far reaching for the health care community, but especially

hospitals and nursing homes as the claims pending involve these two classes of providers. Should the PCF be called upon to pay these claims, the ultimate financial burden in the form of PCF surcharges will fall upon the hospitals and nursing homes across the State that are enrolled in the PCF. It is a difficult situation for all concerned. The PCF is taking every step possible to protect the funds available to pay legitimate malpractice claims, while at the same time being mindful of the potential impact on the health care providers involved.

Reminders from the Surcharge Department

By Susan Gremillion, PCF Surcharge Supervisor

1. The Requirements for Enrollment are:

- a) A certificate of insurance showing at least \$100,000/\$300,000 in coverage, **or**
- b) A security in the amount of \$125,000, a signed pledge agreement and a completed

- c) application containing the necessary information, **and** Payment of the appropriate surcharge based on class, specialty & coverage type.

2. The surcharge department has the following deadlines that must be met:

- a) All payments for renewals must

be made by the provider to the insurance company/agent or directly to the PCF within **30** days of the termination of the prior coverage.

- b) If the payment is made directly to the insurance company/agent, the payments must then be remitted to

the PCF by the insurer or agent within **45** days of the receipt of the provider's payment.

- c) Tail must be paid within **45** days of termination of coverage.
- d) And most important, new coverage is effective upon **receipt** of the proof of financial responsibility and the surcharge.

Review Panel: Newsletter Notes

By Joyce Brignac, PCF Panel Supervisor

The Panel section has reassigned duties to enable us to now have 3 staff members reviewing new complaints – where previously there were only 2 employees doing this function. This is expected to reduce the determination and eligibility timeline when reviewing complaints, and help us to remain in compliance with the notification timeframe allowed in the statute. This also allows for reviewing and responding to amendments in a shorter timeframe.

PCF is still identifying user friendly on-line forms to be accessible from the PCF website, such as: Credentialing Requests (submitted by health care providers and facilities only); Dismissal Requests (submitted by plaintiff or Attorney Chair only); Amendments (THAT DO NOT ADD DEFENDANTS); Attorney Chair selections; and Panel Participation Forms.

Remember, that you can still either fax to (225)342-6053 or email these same types of information and requests to the Panel Manager, Joyce Brignac at joyce.brignac@la.gov.

Please check the PCF website for other staff members



contact information as well.

Please remember to:

1. Contact the PCF with any change of address, since failure to do so increases notification time due to the need to resend returned mail
2. Notify our office in writing as soon as possible with representation information to ensure you are included in the PCF notifications

1099's

As 2007 draws to a close, PCF's Accounting Section is reviewing all pertinent data to ensure accurate reporting of 1099s for IRS processing. It is

anticipated that these reports will be ready for distribution in the fourth week of January to ensure adequate time to reach recipients before the deadline.

PCF Records

By Cathy Moss, PCF Records Manager

The Records section at the PCF has undergone some major changes since our last newsletter. Three years ago PCF began imaging our closed panel files. In late August we began imaging incoming mail as it arrives at PCF. There were many things to consider:

- How the incoming mail would be indexed in the system,
- who would have access to it,
- how the employees would be notified they had mail and
- how the mail would be worked.

Most employees were given a second monitor so they could view their mail on one screen and process it on the other screen.

The imaging system will be fully integrated with our new computer system when it is completed.

Imaging has given us the capability of emailing documents when we receive a request for copies instead of having to pull the paper file and fax the documents. All copy requests are processed by the Records Manager following the public records laws of Louisiana, HIPAA guidelines and attorney general opinions concerning the confidentiality of records.



Baton Rouge, LA State Office Building

For those who don't have email, we can fax the documents from the imaging system. It will take some time to get our existing paper files imaged into the system but we are working toward the goal of making our office virtually paperless. If you need copies please contact our Records Manager, Cathy Moss, via email at cathy.moss@la.gov or via fax at (225) 342-9699. All records requests should be submitted in writing. We do not accept records requests via telephone. If you have any questions regarding records and records requests, please contact Cathy at (225) 342-6032.

**Louisiana Patient's
Compensation Fund**

P.O. Box 3718 Baton
Rouge, La. 70821

Phone:

(225) 342-8787

Toll Free:

1-866-469-9555

Fax:

(225) 342-6053

Editor:

Dechelle Simon

What's on Your Mind?

The Louisiana Patient's Compensation Fund is YOUR Fund. LPCF Quarterly is OUR publication, developed and provided with the goal of increasing awareness, offering assistance and providing knowledge to YOU.

Is there a "gray" area about the LPCF you would like more information about? Is there a particular topic you'd like addressed? Please visit the LPCF website Feedback Forum <http://www.lapcf.louisiana.gov/feedback.htm> LPCF welcomes your input about future articles and issues you'd like to see in LPCF Quarterly.

Let LPCF Quarterly be your gateway to knowledge and interaction in the medical malpractice arena.

Subscribe to this Newsletter

We sincerely hope you enjoyed our newsletter. You can now receive LPCF Quarterly in your inbox as soon as it is published by visiting <http://www.lapcf.louisiana.gov/Newsletter.htm> or by simply [sending an email](#) to Dechelle Simon (Dechelle.Simon@La.gov) asking to be placed on the list. Please include your full name as well as your company/agency.

We're on the Web!

Visit us at:

www.lapcf.louisiana.gov